

June 14, 2013

Dear Subcommittee Members,

Thank you for thinking about the "point of adoption for purposes of appeal" issue. I received three sets of comments/recommendations from members of our subcommittee:

1) Karen Perrine is wondering if the "effective date" might be a better solution than the "final adoption date". She believes it is a more certain date, with the only outlier being those regulations that can become effective upon filing with the Registrar; for those, the notice of appeal could be 30 days after publication in the Register. She proposes the following:

**Rule 2A:2:**

(a) Any party appealing from a regulation or case decision shall file with the agency secretary; a notice of appeal signed by the appealing party or that party's counsel. The notice of appeal must be filed within 30 days after ~~adoption of the date on which, subject only to any readoption required pursuant to § 2.2-4015 (B), the agency takes final action to adopt~~ the regulation or after service of the final order in the case decision, ~~a notice of appeal signed by the appealing party or that party's counsel~~. In the event that a case decision is required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days shall be added to the 30-day period for that party. Service under this Rule shall be sufficient if sent by registered or certified mail to the party's last address known to the agency.

**Section 2.2-4012 new subsection F:**

F. In the event that final adoption of a regulation will not occur at a public meeting, the agency must provide notice of final adoption to the public prior to actual adoption of the regulation. The notice must specify (i) the date on which the agency intends to adopt the regulation, (ii) that public comment will be received, and (iii) an agency contact person. The notice must be published in the Virginia Register and posted on Virginia Regulatory Town Hall at least 15 days before adoption.

She noted that, under current publication schedules, this would create an additional 19-day period before adoption. For example, the cut-off date for submission of items for publication is August 7 for the August 26th issue of the Register. Also, the date of a board meeting at which final adoption may occur is not published in the Register (although public hearings on regulations are), so one could argue that it would not be necessary to publish this notice in the Register.

2) Roger Chaffe suggested the following amendment to Rule 2A:2:

(a) Any party appealing from a regulation or case decision shall file with the agency secretary, within 30 days after ~~the date on which the agency takes final action to adopt or if required pursuant to § 2.2-4015 (B) to readopt~~ ~~adoption~~ ~~of~~ the regulation or after service of the final order in the case decision, a notice of appeal signed by the appealing party or that party's counsel. In the event that a case decision is required by § 2.2-4023 or by any other provision of law to be served by mail upon a party, 3 days shall be added to the 30-day period for that party. Service under this Rule shall be sufficient if sent by registered or certified mail to the party's last address known to the agency.

Accompanied by the addition of this definition to § 2.2-4001:

“Adoption” or “readoption” of a regulation shall occur when an agency takes final action with respect to that regulation if such action is taken at a publicly held meeting. If such action is taken other than at such a meeting the agency shall publish notice no less than \_\_\_ days in advance of the date on which it intends to take such action.

3) Cindy Berndt suggested the following amendment to § 2.2-4012:

E. A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

F. At least five days before final adoption of the regulation, the agency shall announce the date on which final adoption of the regulation is to occur. Such announcement may be made through posting on the Virginia Regulatory Town Hall, publication in the Virginia Register of Regulations or such other means as the agency deems appropriate.

G. Immediately upon the adoption by any agency of any regulation in final form, a copy of (i) the regulation, (ii) a then current summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget, and (iii) the agency's summary description of the nature of the oral and written data, views, or arguments presented during the public proceedings and the agency's comments thereon shall be transmitted to the Registrar of Regulations, who shall retain these documents as permanent records and make them available for public inspection. ~~A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.~~

With that, Roger's proposed definition could be modified to say that adoption is when the agency takes final action.

Also, Melanie West of DPB helpfully noted that the way the current Executive Branch Review process works, if a Director/Commissioner approves a final adopted regulation, it could still be modified without public comment during the time it is under review by OAG, DPB, the Cabinet Secretary, and the Governor's office. It is only at the time the final adopted regulation is submitted to the Register's office for publication & public comment that the agency is truly done with it. Which may provide a further complication.

I suggest that we meet to determine the preferred path forward. Please provide Andrew with your availability to meet over the next couple of weeks, and we will try to juggle vacation schedules. We could meet at lunch time, as we usually do, to keep this simple.

Thanks,

Elizabeth

**VAPA references to "adoption"**  
[Note: § 2.2-4007.01 and § 2.2-4010 omitted because irrelevant]

**§ 2.2-4006. Exemptions from requirements of this article.**

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

4. Regulations that are:

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed **adoption** of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

**§ 2.2-4007.1. (Effective until July 1, 2014) Regulatory flexibility for small businesses; periodic review of regulations.**

...

B. In addition to the requirements of §§ 2.2-4007 through 2.2-4007.06, prior to the **adoption** of any proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small businesses. ...

C. Prior to the **adoption** of any proposed regulation that may have an adverse effect on small businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

**§ 2.2-4007.1. (Effective July 1, 2014) Regulatory flexibility for small businesses; periodic review of regulations.**

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B. In addition to the requirements of §§ 2.2-4007 through 2.2-4007.06, prior to the **adoption** of any proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small businesses. ...

C. Prior to the **adoption** of any proposed regulation that may have an adverse effect on small businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

**§ 2.2-4012. Purpose; **adoption**; effective date; filing; duties of Registrar of Regulations.**

...

B. Subject to the provisions of §§ 2.2-4013 and 2.2-4014, all regulations, including those that agencies, pursuant to § 2.2-4002, 2.2-4006, or 2.2-4011, may elect to dispense with the public procedures provided by §§ 2.2-4007.01 and

2.2-4009, may be formally and finally adopted by the signed order of the agency so stating. No regulation except an emergency regulation or a noncontroversial regulation promulgated pursuant to § 2.2-4012.1 shall be effective until the expiration of the applicable period as provided in § 2.2-4015. In the case of an emergency regulation filed in accordance with § 2.2-4011, the regulation shall become effective upon its **adoption** and filing with the Registrar of Regulations, unless a later date is specified. The originals of all regulations shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. They, or facsimiles thereof, shall be made available for public inspection or copying. Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as required by other laws.

E. Immediately upon the **adoption** by any agency of any regulation in final form, a copy of (i) the regulation, (ii) a then current summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget, and (iii) the agency's summary description of the nature of the oral and written data, views, or arguments presented during the public proceedings and the agency's comments thereon shall be transmitted to the Registrar of Regulations, who shall retain these documents as permanent records and make them available for public inspection. A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final **adoption** of the regulation.

**§ 2.2-4013. Executive review of proposed and final regulations; changes with substantial impact.**

...

B. Upon final **adoption** of the regulation, the agency shall forward a copy of the regulation to the Registrar of Regulations for publication as soon as practicable in the Register. All changes to the proposed regulation shall be highlighted in the final regulation, and substantial changes to the proposed regulation shall be explained in the final regulation.

C. If the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may require the agency to provide an additional thirty days to solicit additional public comment on the changes by transmitting notice of the additional public comment period to the agency and to the Registrar within the thirty-day **adoption** period described in subsection D, and publishing the notice in the Register. The additional public comment period required by the Governor shall begin upon publication of the notice in the Register.

D. A thirty-day final **adoption** period for regulations shall commence upon the publication of the final regulation in the Register. The Governor may review the final regulation during this thirty-day final **adoption** period and if he objects to any portion or all of a regulation, the Governor may file a formal objection to the regulation, suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014, or both.

If the Governor files a formal objection to the regulation, he shall forward his objections to the Registrar and agency prior to the conclusion of the thirty-day final **adoption** period. The Governor shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it or if he fails to suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014 during the thirty-day final **adoption** period. The Governor's objection, or the suspension of the regulation, or both if applicable, shall be published in the Register.

A regulation shall become effective as provided in § 2.2-4015.

**§ 2.2-4014. Legislative review of proposed and final regulations.**

A. After publication of the Register pursuant to § 2.2-4031, the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable or the Joint Commission on Administrative Rules may meet and, during the promulgation or final **adoption** process, file with the Registrar and the promulgating agency an objection to a proposed or final adopted regulation. The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within 21 days after the receipt by the promulgating agency of a legislative objection, that agency shall file a response with the Registrar, the

objecting legislative committee or the Joint Commission on Administrative Rules, and the Governor. If a legislative objection is filed within the final **adoption** period, subdivision A 1 of § 2.2-4015 shall govern.

B. In addition or as an alternative to the provisions of subsection A, the standing committee of both houses of the General Assembly to which matters relating to the content are most properly referable or the Joint Commission on Administrative Rules may suspend the effective date of any portion or all of a final regulation with the Governor's concurrence. The Governor and (i) the applicable standing committee of each house or (ii) the Joint Commission on Administrative Rules may direct, through a statement signed by a majority of their respective members and by the Governor, that the effective date of a portion or all of the final regulation is suspended and shall not take effect until the end of the next regular legislative session. This statement shall be transmitted to the promulgating agency and the Registrar within the 30-day **adoption** period, and shall be published in the Register.

If a bill is passed at the next regular legislative session to nullify a portion but not all of the regulation, then the promulgating agency (i) may promulgate the regulation under the provision of subdivision A 4 a of § 2.2-4006, if it makes no changes to the regulation other than those required by statutory law or (ii) shall follow the provisions of §§ 2.2-4007.01 through 2.2-4007.06, if it wishes to also make discretionary changes to the regulation. If a bill to nullify all or a portion of the suspended regulation, or to modify the statutory authority for the regulation, is not passed at the next regular legislative session, then the suspended regulation shall become effective at the conclusion of the session, unless the suspended regulation is withdrawn by the agency.

C. A regulation shall become effective as provided in § 2.2-4015.

#### **§ 2.2-4015. Effective date of regulation; exception.**

A. A regulation adopted in accordance with this chapter and the Virginia Register Act (§ 2.2-4100 et seq.) shall become effective at the conclusion of the thirty-day final **adoption** period provided for in subsection D of § 2.2-4013, or any other later date specified by the agency, unless:

1. A legislative objection has been filed in accordance with § 2.2-4014, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the expiration of the applicable twenty-one-day extension period provided in § 2.2-4014;
2. The Governor has exercised his authority in accordance with § 2.2-4013 to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the period for which the Governor has provided for additional public comment;
3. The Governor and (i) the appropriate standing committees of each house of the General Assembly or (ii) the Joint Commission on Administrative Rules have exercised their authority in accordance with subsection B of § 2.2-4014 to suspend the effective date of a regulation until the end of the next regular legislative session; or
4. The agency has suspended the regulatory process in accordance with § 2.2-4007.06, or for any reason it deems necessary or appropriate, in which event the regulation, unless withdrawn by the agency, shall become effective in accordance with subsection B.

#### **§ 2.2-4016. Withdrawal of regulation.**

Nothing in this chapter shall prevent any agency from withdrawing any regulation at any time prior to the effective date of that regulation. A regulation may be repealed after its effective date only in accordance with the provisions of this chapter that govern the **adoption** of regulations.

## ALAC Regulation Adoption Date - Relevant Statutes in Other States

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Alabama	Code of Alabama §41-22-5	(a) Prior to the adoption, amendment, or repeal of any rule, the agency shall: (1) Give at least 35 days' notice of its intended action. Date of publication in the Alabama Administrative Monthly shall constitute the date of notice....
Arizona	Arizona Revised Statutes §41-1092.06	<p>A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:</p> <ol style="list-style-type: none"> <li>1. Identify the statute or rule that is alleged to have been violated or on which the action is based.</li> <li>2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.</li> <li>3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.</li> <li>4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.</li> </ol> <p>B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments...</p>
California	California Government Code §11340.7	(c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency's reconsideration of any matter relating to a petition shall be subject to subdivision (a).

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Delaware	29 Delaware Code §10141	<p>In Delaware a complaint must be filed within 30 days of the order being published in the Register of Regulations.</p> <p>(a) Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.</p> <p>(b) No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.</p> <p>(c) When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.</p> <p>(d) Except as provided in subsection (c) of this section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.</p> <p>(e) Upon review of regulatory action, the agency action shall be presumed to be valid and the complaining party shall have the burden of proving either that the action was taken in a substantially unlawful manner and that the complainant suffered prejudice thereby, or that the regulation, where required, was adopted without a reasonable basis on the record or is otherwise unlawful. The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency acted.</p>
Georgia	Georgia Statutes §50-13-9	<p>An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rule-making proceedings in accordance with Code Section 50-13-4.</p>
Idaho	Idaho Statutes §67-5224 (2)	<p>A petition for judicial review of a temporary or final rule may be filed at any time, except as limited by section <a href="#">67-5231</a>, Idaho Code. Idaho Code 67-5273(1).</p> <p>A proceeding, either administrative or judicial, to contest any rule on the ground of noncompliance with the procedural requirements of this chapter must be commenced within two (2) years from the effective date of the rule. Idaho Code 67-5231(2).</p>

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		<p>Effective date of final rule:  A rule adopted by an agency is considered a pending rule until the rule has been submitted to the Idaho Legislature for review. The rule becomes final and effective upon the conclusion of the legislative session at which the rule was submitted for review. See Idaho Code 67-5224(5) below.  Idaho Code 67-5224(5)  (a) Except as set forth in sections <a href="#">67-5226</a> and <a href="#">67-5228</a>, Idaho Code, <u>a pending rule shall become final and effective upon the conclusion of the legislative session at which the rule was submitted to the legislature for review</u>, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.  (b) When the legislature approves, amends or modifies a pending rule pursuant to section <a href="#">67-5291</a>, Idaho Code, the rule shall become final and effective upon adoption of the concurrent resolution or such other date specified in the concurrent resolution.  (c) Except as set forth in sections <a href="#">67-5226</a> and <a href="#">67-5228</a>, Idaho Code, no pending rule or portion thereof imposing a fee or charge of any kind shall become final and effective until it has been approved, amended or modified by concurrent resolution.</p>
Model State APA	§503	<p><b>SECTION 503. TIME TO SEEK JUDICIAL REVIEW OF AGENCY ACTION; LIMITATIONS.</b>  (a) Judicial review of a rule on the ground of noncompliance with the procedural requirements of this [act] must be commenced not later than [two] years after the effective date of the rule. Judicial review of a rule or guidance document on other grounds may be sought at any time.  (b) Judicial review of an order or other final agency action other than a rule or guidance document must be commenced not later than [30] days after the date the parties are notified of the order or other agency action.  (c) The time for seeking judicial review under this section is tolled during any time a party pursues an administrative remedy before the agency which must be exhausted as a condition of judicial review.</p>
Nevada	Nevada Revised Statutes §233B.0617	<p><b>Limitation on objections to regulation.</b> No regulation adopted after July 1, 1965, is valid unless adopted in substantial compliance with this chapter but no objection to any regulation on the ground of noncompliance with the procedural requirements of <a href="#">NRS 233B.060</a> to <a href="#">233B.0617</a>,</p>

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		inclusive, may be made more than 2 years after its effective date.
New Hampshire	New Hampshire Revised Statutes §541-A: 24	<p>Under New Hampshire's APA (RSA 541-A), adoption must precede filing, and filing is necessary to make a rule effective. Most rules are effective at 12:01 a.m. the day after they are filed as adopted rules with the NH Office of Legislative Services (OLS). The agency may specify a different date and time for the effective date and time, provided that they are not earlier than the date and time of filing. The one exception is emergency rules, which are effective immediately upon filing. Although the Director of the OLS may refuse a rule for filing, the grounds are limited. If there were an unresolved dispute with the agency about the filing, it would be up to a court to decide if the rule were legally valid. Effective dates are indicated on the OLS website and in the <i>NH Rulemaking Register</i> as well as in the published rule. The APA requires notice of adopted rules to be printed in the <i>Register</i>.</p> <p>Appeals for procedural violations of the rulemaking process under the APA must be made to the Superior Court in Merrimack County (trial court for the state capital city region) within one year of the effective date of the rule (RSA 541-A:23, IV). However, declaratory judgments may be brought in the same court at any time against a rule [as defined in RSA 541-A:1, XV], even if the rule is oral and has never been filed under the APA, "if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff." (RSA 541-A:24)</p>
New Jersey	New Jersey Statutes §52:14B-1	<p>The New Jersey APA, N.J.S.A. 52:14B-1 et seq., provides at N.J.S.A. 52:14B-4(d) that, "A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of P.L.1968, c.410 (C.52:14B-1 et seq.) shall be commenced within one year from the effective date of the rule." There is no time frame for challenges to a rule's validity on other grounds, such as the rule's exceeding the promulgating agency's statutory authority or that the rule is "arbitrary or capricious."</p> <p>A rules is generally effective on the date of publication of its notice of adoption in the New Jersey Register; exceptions that are effective upon the date of the submission of an adoption</p>

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		<p>to the Office of Administrative Law (OAL) for Register publication include emergency rules, organizational rules, a readoption of rules (to avoid “sunset”), and the adoption of a concurrent proposal of an emergency rule. (See N.J.A.C. 1:30-6.6.) The adoption date of a rule is the date of official approval of a rule by the promulgating agency, authorizing its effectiveness through submission to the OAL for Register publication. (See N.J.A.C. 1:30-1.2, definitions of “adopt,” “effective,” and “promulgate.”) Both the date of adoption and the effective date of a rule appear in the rule’s notice of adoption. (See N.J.A.C. 1:30-6.1(b)6 and 9.) In some instances where a rule is effective upon submission to the OAL, the date of adoption and the effective date will coincide, but such occurrence is up to the promulgating agency.</p>
New Mexico	New Mexico Statutes §14-4-5	<p>New Mexico does not have a mechanism for filing an appeal. The only recourse is to sue in court.</p> <p><b>14-4-5. Filing and compliance required for validity.</b> (1995) Statute text          No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act [Chapter 14, Article 4 NMSA 1978]. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register. Emergency regulations may go into effect immediately upon filing with the records center, but shall be effective no more than thirty days unless they are published in the New Mexico register.</p>
North Carolina		<p>North Carolina requires most rules to be adopted according to the NC Administrative Procedure Act (APA). Before a rule can take effect it must be formally adopted by the agency after notice, hearing, and comments. But then it must also be approved by the NC Rules Review Commission. If it is not approved by the commission, it (the rule) cannot be entered in the NC Administrative Code (NCAC) and does not take effect. Generally a rule takes effect and is considered entered in the NCAC the first of the month following approval – usually 10 – 15 days later.</p> <p>Review and approval of the rule includes establishing that there is authority for the rule, the rule is clear and unambiguous, the rule is necessary, and – I believe, most pertinent to Andrew’s question – whether the proper procedure was followed.</p>

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		<p>G.S. 150B-21.9(a1) states that “[e]ntry of a rule in the [NCAC] after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with [the APA].” There is no limitation in the APA on how long a person has to challenge the procedure followed in adopting a rule. It also seems to me that there is no limitation on the legal ability of someone to mount whatever action they might find available to slow down or stop a rule during the process prior to adoption.</p> <p>In North Carolina it is fair to say that a rule remains open to procedural attack both before and after adoption and anytime after publication.</p> <p>The rule is also open to challenges on substantive grounds (lack of authority or necessity, ambiguity, arbitrary and capricious, unconstitutionality) its entire life. This can be by way of a contested case defense to an agency enforcement action, a declaratory judgment action, an appeal of an agency decision in a declaratory ruling action, or any other way an inventive attorney can dream.</p> <p>In NC one must be an “aggrieved party” to challenge a rule, but there is no readily apparent limitation on when that challenge can or must be started.</p>
Oklahoma	Oklahoma Statutes §75-308.2	<p>Oklahoma's APA stipulates that challenges to rules based on "noncompliance with the procedural requirements of Article 1 of the [APA] must be commenced within two (2) years from the <b>effective date</b> of the promulgated rule." (Note: Article 1 sets out the requirements for notice, adoption, legislative/gubernatorial review, final adoption, promulgation in the <i>Oklahoma Register</i>, and subsequent publication in the <i>Oklahoma Administrative Code</i>. Also, permanent rules cannot be effective until at least 10 days after publication of the finally adopted rules in the <i>Register</i>.)</p> <p>Here's the actual statute . . . .</p> <p>§75-308.2. Rules - Necessity of promulgation - Interpretations not to change - Prospective effect only - Limitation period on contest proceedings - Force of law and prima facie evidence.</p> <p>A. No agency rule is valid or effective against any person or party, or may be invoked by the agency for any purpose, until it has been promulgated as required in the Administrative Procedures Act.</p> <p>B. A proceeding to contest any promulgated rule on the</p>

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		<p>ground of noncompliance with the procedural requirements of Article I of the Administrative Procedures Act must be commenced within two (2) years from the effective date of the promulgated rule.</p> <p>C. Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or revised or unless a court of competent jurisdiction determines otherwise. Except as otherwise provided by law, rules shall be prima facie evidence of the proper interpretation of the matter to which they refer.</p>
Tennessee	Tennessee Code §4-5-322	<p><b>4-5-322. Judicial review.</b></p> <p>(a) (1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. A preliminary, procedural or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.</p> <p>(2) A state agency is considered to be an aggrieved person for the purpose of judicial review when the order is from a board, commission or other entity independent of the aggrieved agency. In such instances, judicial review under this chapter is permitted upon the request of the agency head and the approval of the attorney general and reporter.</p> <p>(b) (1) (A) Proceedings for review are instituted by filing a petition for review in the chancery court of Davidson County, unless another court is specified by statute. Such petition shall be filed within sixty (60) days after the entry of the agency's final order thereon.</p>
Texas		<p>Texas: An adoption can <i>take effect</i> only after an agency has FILED it with the secretary of state. This applies to emergency (temporary) and permanent rules alike. The secretary of state is obligated to publish, but the filing date rather than publication date starts the clock on a rule becoming effective. Of course, adoption is an action performed by the rulemaking authority (typically a commission or board for an agency). I am uncertain if the effective date matters necessarily when a rule is challenged. Or at least I'm not sure that you would need to wait until the effective date to challenge the agency in court.</p>

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